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NO. 27203

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

MARK Y. WATASE, doing business as
MARK DEVELOPMENT, INC.,
Plaintiff-Appellant/Cross-Appellee
v.
AKONI KAPIHE and LEHUA KAPIHE,
Defendants-Appellees/Cross-Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CIV. NO. 1RC04-1-1574)

SUMMARY DISPOSITION ORDER
(By: Foley, Presiding Judge, Nakamura, and Fujise, JJ.)

In this landlord-tenant dispute, Plaintiff-Appellant/Cross-Appellee Mark Y. Watase, doing business as Mark Development, Inc. (collectively, "MDI"), filed a complaint against Defendants-Appellees/Cross-Appellants Akoni Kapihe and Lehua Kapihe (collectively, "the Kapihes") in the District Court of the First Circuit (district court).[1] MDI managed a 70-unit low income housing project in Kapolei. The complaint alleged that the Kapihes owed MDI $3,137.69 for cleaning and repair costs incurred by MDI after the Kapihes vacated their rental unit. The Kapihes filed a counterclaim alleging that under threat of eviction, MDI wrongfully forced them to move into a higher-priced rental unit in the housing project, and the Kapihes sought damages for breach of contract, breach of an implied covenant of good faith and fair dealing, misrepresentations made negligently or recklessly, unfair and deceptive trade practices, and violations of the Landlord-Tenant Code.

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[1] The Honorable Peter Stone presided.

After a bench trial, the district court ruled in favor of the Kapihes. The court determined that MDI failed to sustain its burden of proving that the condition of the vacated unit was not attributable to ordinary wear and tear. It therefore found that the Kapihes were not responsible for the cleaning and repair costs alleged in the complaint. The court also awarded damages to the Kapihes on their counterclaim, finding that MDI had breached the rental agreement and had engaged in unfair and deceptive trade practices in violation of Hawaii Revised Statutes § 480-2 (1993 & Supp. 2007).[2]

MDI appeals and the Kapihes cross-appeal from the district court's Judgment filed on March 4, 2005. On appeal, MDI asserts that the district court clearly erred in: 1) finding that damages to the vacated unit were the result of normal wear and tear and not caused by the Kapihes; 2) attributing the error in computing the Kapihes' annual income (to determine their eligibility for particular housing units) to MDI rather than the Kapihes; and 3) determining that MDI had engaged in unfair and deceptive trade practices. On cross-appeal, the Kapihes argue that the district court erred by failing to find that MDI engaged

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[2] HRS § 480-2 (1993 & Supp. 2007) provides as follows:

§ 480-2 Unfair competition, practices, declared unlawful. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

(b) In construing this section, the courts and the office of consumer protection shall give due consideration to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(c) No showing that the proceeding or suit would be in the public interest (as these terms are interpreted under section 5(b) of the Federal Trade Commission Act) is necessary in any action brought under this section.

(d) No person other than a consumer, the attorney general or the director of the office of consumer protection may bring an action based upon unfair or deceptive acts or practices declared unlawful by this section.

(e) Any person may bring an action based on unfair methods of competition declared unlawful by this section.

in additional acts of unfair and deceptive practices beyond those found by the court. We affirm the district court.

I.

After a careful review of the record and the briefs submitted by the parties, we resolve the issues raised on appeal as follows:

A. MDI's Appeal

1. The district court did not clearly err in determining that MDI failed to satisfy its burden of proving that the alleged damages to the vacated unit were not the result of normal wear and tear. See Chun v. Bd. of Trustees of the Employees' Retirement Sys. of the State of Hawai'i, 106 Hawai'i 416, 430, 106 P.3d 339, 353 (2005) (stating that the clearly erroneous standard applies to a trial court's findings of fact and its conclusions of law that present mixed questions of fact and law). There was substantial evidence in the record demonstrating that the cleaning and repair costs sought by MDI were attributable to normal wear and tear. In rejecting MDI's claim for recovery of such costs from the Kapihes, the district court made credibility determinations that we decline to disturb on appeal. See Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 117, 839 P.2d 10, 28 (1992).

2. The district court did not clearly err in attributing the error in computing the Kapihes' annual income to MDI rather than the Kapihes. The evidence showed that the Kapihes accurately stated their annual income in their original application for the housing project. Akoni Kapihe's employer also submitted an income verification form that accurately disclosed Akoni Kapihe's annual income. However, MDI misread the employer's income verification form and thus misstated the Kapihes' income in the certification of eligibility for the lower-priced unit. There was substantial evidence presented at trial to support the district court's finding that MDI was responsible for the error in calculating the Kapihes' income and

that MDI wrongfully induced the Kapihes to move to a higher-priced rental unit.

3. The district court did not clearly err in finding that MDI had engaged in unfair and deceptive trade practices by accusing the Kapihes of lying about their income rather than acknowledging its own mistake in computing that income, threatening to evict the Kapihes if they did not move to a higher-priced unit, and aggressively pursing claims for cleaning and repair costs arising out of the Kapihes' forced move. There was substantial evidence to support the district court's finding.

B. The Kapihes' Cross-Appeal

The district court did not err by failing to find that MDI engaged in additional acts of unfair and deceptive practices beyond those found by the court. The Kapihes contend in their cross-appeal that the district court should have found that MDI engaged in additional unfair and deceptive acts. The Kapihes describe the alleged additional unfair and deceptive acts as MDI's billing the Kapihes for false and unsubstantiated repair charges and attempting to collect the charges. However, there was evidence in the record to support the conclusion that the repair charges and the attempt to collect them involved a legitimate dispute between MDI and the Kapihes over which party was responsible for the charges. The fact that the district court ultimately concluded that MDI was not entitled to recover those charges does not mean that MDI's actions to assert and collect the charges were unfair or deceptive.

II.

The Judgment entered by the district court on March 4, 2005, is affirmed.

DATED: Honolulu, Hawai'i, April 30, 2008.

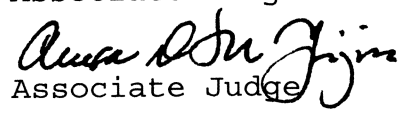
On the briefs:

Gavin K. Thornton
Ravinder S. Nagi
(Legal Aid Society of Hawaii)
for Defendants-Appellees/
Cross-Appellants

George H. Yamamoto
for Plaintiff-Appellant/
Cross-Appellee

Presiding Judge

Associate Judge


Associate Judge